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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,472	09/26/2003	Iain J. McNeill	01-7096	8241
33681 7590 03/27/2009 PLANTRONICS, INC. IP Department/Legal 345 ENCINAL STREET P.O. BOX 635 SANTA CRUZ, CA 95060-0635				
EXAMINER				
ARMSTRONG, ANGELA A				
ART UNIT		PAPER NUMBER		
2626				
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03/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,472

Applicant(s)

MCNEILL ET AL.

Examiner

ANGELA A. ARMSTRONG

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD/US)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 26, 2009, has been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. Claims 1-11 are directed to methods not eligible as a process under 35 U.S.C. 101. A method or process is statutory under 35 U.S.C. 101 if the method or process either is (a) tied to another statutory class of invention or (b) a physical transformation of statutory subject matter to another state or thing. The method steps of claims 1-11 fail to specifically recite limitations directed to the process being tied to another class of invention (for example, explicitly reciting limitations for an apparatus or element that performs one of the method steps) or limitations directed to identifying statutory subject matter that is physically transformed to another state or thing.

4. Claims 1-11 are directed to detecting and processing voice activity in a communication system, thus it is clear that there is no transformation of underlying subject matter. Therefore, the claims must be tied to another statutory category by identifying the apparatus performing the steps of the method, where "identifying the apparatus" requires that the process claim explicitly recite the specialized machine or apparatus, or recite a step that inherently involves the use of a specialized machine or apparatus. The claimed methods of 1-11 could be performed by a human, and thus are not tied to another statutory class.

5. Regarding claim 1, the recited steps of "detecting voice activity on at least one of a receive and a transmit channel," "outputting voicing decision," "storing the voicing decision outputs" and "generating a voice activity performance metric" could be performed by a human listening to a phone conversation and determining a person is talking, entering the decision and saving it in a database, and determining if the person is speaking loudly or the person is agitated or angry. Absent any positive recitation of a specific machine performing these steps, claim 11 is therefore a non-statutory process.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 5, 7-9, 11-12, 17-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewan (US Patent No. 7,043,008) in view of Chan et al (US Patent No. 6,600,821).

Dewan discloses a system and method for selectively monitoring, recording, storing, and handling telephone conversations through the use of speech analysis.

Regarding claim 1, Dewan discloses detecting voice activity on at least one of a receive and a transmit channel in a communication system; outputting voicing decision outputs based on the step of detecting; and generating a voice activity performance metric based on the voicing decision output (col. 2, line 41 continuing to col. 3, line 34). Dewan does not teach storing the voicing decision output in memory. However, storing the voicing decision outputs would allow the supervisor to track information of what type of voicing signal triggered the recording of the telephone conversations which would be used to monitor and evaluate the various agents of whom the calls have to be routed. Therefore, it would have been obvious to modify the system of Dewan to store voicing decision outputs to allow the supervisor to track information of what type of voicing signal triggered the recording of the telephone conversations which would be used to monitor and evaluate the various agents of whom the calls have to be routed.

Dewan does not teach the generated voice activity performance metric comprises a duration of voice activity. Chan discloses a system and method of detecting problematic call interactions of a communications system call centers with agents servicing customer telephone calls, which monitors whether or not a phone call has been of a long duration (col. 4, lines 46-53). Chan specifically teaches the system allows problematic calls to be detected by a supervisor, ensuring the quality or level of service provided by call agents does not degrade. It would have been obvious to one of ordinary skill to detect voice activity or phone call duration to detect problematic calls and ensure call center agents are providing quality customer service, as suggested by Chan.

Regarding claim 5, Dewan discloses the performance metric facilitates detecting at least one of voice strain, stress, and excessive double talk (col. 2, line 41 continuing to col. 3, line 34).

Regarding claim 7, Dewan discloses outputting the voice activity performance metric to a display (col. 2, line 41 continuing to col. 3, line 34).

Regarding claim 8, Dewan discloses the step of detecting is performed throughout an active call via the communication system (col. 2, line 41 continuing to col. 3, line 34).

Regarding claim 9, Dewan discloses the step of detecting includes detecting voice activity on both the receive channel and the transmit channel in the communications system (col. 2, line 41 continuing to col. 3, line 34).

Regarding claim 11, Dewan discloses automatically routing calls based at least in part on the voice activity performance metric (col. 2, line 41 continuing to col. 3, line 34).

Regarding claims 12, 17-20 and 22: claims 12, 17-20 and 22 are system claims which perform functions that are similar to the process performed by the methods of claims of 1, 5, 7-9 and 11, and therefore are rejected under similar rationale.

Claims 2-4, 6, 10, 13-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewan in view of Chan and further in view of Maloney et al (US Patent No. 5,696,811).

Regarding claims 2-4, 6, 10, 13-16, and 21 Dewan does not teach monitoring the conversations over a predetermined period of time or tracking the durations of the phone calls. Maloney discloses a method and system for automatically monitoring the performance quality of call center service representatives. Maloney discloses the system is available for monitoring for

a specific time or range, tracking the number of extensions monitored, the number of channels monitored, the duration of the monitoring periods, time intervals of monitoring periods, and generates a report to the supervisor (col. 5, line 18 to col. 14, line 44). Maloney discloses the system assists in ensuring consistency and equity across call center agent performance evaluation. It would have been obvious to one of ordinary skill at the time of the invention to modify the system of Dewan to implement monitoring at predetermined time periods and tracking duration and time interval information associated with call center agent phone calls, as suggested by Maloney, for the purpose of ensuring consistency and equity across call center agent performance evaluation.

Response to Arguments

6. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANGELA A. ARMSTRONG whose telephone number is (571)272-7598. The examiner can normally be reached on Monday-Thursday 11:30-8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick N. Edouard can be reached on 571-272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Angela A Armstrong/
Primary Examiner, Art Unit 2626